Edward C. Woltkamp d/b/a General Interiors *and* Painters Union Local 83, International Brotherhood of Painters and Allied Trades, AFL–CIO. Case 20–CA–22158

February 28, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on December 21, 1989, against Edward C. Woltkamp d/b/a General Interiors, the Respondent, alleging that it had violated Section 8(a)(1) of the National Labor Relations Act by telling its employees that it did not want union stewards working on its jobsites and that it would harass the union stewards and by threatening to terminate its employees because of their union activities and sympathies, and had violated Section 8(a)(1) and (3) by terminating employee Gary Van Tuyl. Subsequently, on September 25, 1990, the Respondent filed an answer, admitting in part and denying in part the allegations of the complaint and requesting that the complaint be dismissed in its entirety.

Thereafter, on October 9, 1990, the General Counsel filed a Motion for Summary Judgment, with appendices attached. The General Counsel submitted that the Respondent's answer raises no material issues of fact requiring an evidentiary hearing and that summary judgment is warranted.

On October 11, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint, inter alia, alleges as follows: Steve Woltkamp and Earl Fye have been at all times material supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act. About May 18, 1988, the Respondent, by Steve Woltkamp, at the Respondent's facility, told its employees that it did not want union stewards working on its jobsites and that it would harass the union stewards. About June 27, 1988, the Respondent, by Earl Fye, at the Respondent's worksite at Marin General Hospital, in San Rafael, California, threatened to fire its employees because of their union activities and sympathies. About July 1, 1988, the Respondent terminated Gary Van Tuyl because he joined, supported, or otherwise assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The Respondent denies the complaint's allegation that Earl Fye is, or at all times material was, a supervisor within the meaning of Section 2(11) of the Act or an agent of the Respondent within the meaning of Section 2(13) of the Act. It also denies the allegation that Steve Woltkamp is and has been at all times material an agent of the Respondent within the meaning of Section 2(13) of the Act but admits that Woltkamp is employed in a supervisory capacity by the Respondent.[1] The Respondent otherwise admits the complaint's allegations. For the reasons set forth below, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material the Respondent has been a member of the Bay Area Drywall Finishers Association which has been, at all times material, an organization of employers engaged in the construction industry in the Bay Area, and which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements.

During the 12 months preceding the issuance of the complaint in this case, employer-members of the Bay Area Drywall Finishers Association, including the Respondent, in the course and conduct of their business operations in the construction industry in the Bay Area, have performed construction services in excess of $50,000 for entities which meet the Board's direct standards for the assertion of jurisdiction. The Respondent admits and we find that the employer-members of the Bay Area Drywall Finishers Association, including the Respondent, have been, at all times material, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union has been, at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent in its answer to the complaint admits, and we find, that about May 18, 1988, in violation of Section 8(a)(1) of the Act, the Respondent, by Woltkamp, told its employees that it did not want

[1] The Respondent also denies the complaint allegation that a copy of the charge in this case was served on it on August 19, 1988. Proof of service of the charge on the Respondent, dated August 19, 1988, together with a copy of the receipt showing delivery to the Respondent on August 23, 1988, is attached to the Motion for Summary Judgment, which is undisputed. Accordingly, we find that the Respondent was properly served with a copy of the charge.

union stewards working on its jobsites and that it would harass the union stewards. The Respondent further admits, and we find, that about June 27, 1988, it, by Fye, at the Respondent's worksite at Marin General Hospital, in San Rafael, California, violated Section 8(a)(1) of the Act by threatening to fire its employees because of their union activities and sympathies.[2] The Respondent also admits, and we find, that about July 1, 1988, it terminated Gary Van Tuyl in violation of Section 8(a)(1) and (3) of the Act, because he joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CONCLUSIONS OF LAW

1. The Respondent, Edward C. Woltkamp d/b/a General Interiors, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Painters Union Local 83, International Brotherhood of Painters and Allied Trades, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and has thus violated Section 8(a)(1) of the Act by:

(a) Telling its employees at its facility that it did not want union stewards working on its jobsites and that it would harass the union stewards.

(b) Threatening to terminate its employees at the Marin General Hospital, in San Rafael, California, because of their union activities and sympathies.

4. By terminating its employee Gary Van Tuyl because he joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order that the Respondent offer full and immediate reinstatement to Gary Van Tuyl and that he be made whole for any loss of pay or benefits that he may have suffered by reason of the discrimination against him as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Edward C. Woltkamp d/b/a General Interiors, Lodi, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that it does not want union stewards working on its jobsites and threatening to harass the union stewards.

(b) Threatening to terminate employees because of their union activities and sympathies.

(c) Discharging or otherwise discriminating against any employee for supporting Painters Union Local 83, International Brotherhood of Painters and Allied Trades, AFL–CIO or any other labor organization.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Gary Van Tuyl immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[2] The Respondent admits that it, by Fye, threatened to fire the Respondent's employees because of their union activities and sympathies. The Respondent also admits the complaint's allegation drawing the legal conclusion that it, by Fye's acts and conduct, violated Sec. 8(a)(1) of the Act. Accordingly, as contended by the General Counsel, the Respondent's denial that Fye was either its supervisor or its agent is effectively rendered moot and there is no material issue of fact to be resolved. We therefore find it unnecessary to determine whether Fye was otherwise an agent of the Respondent within the meaning of Sec. 2(13) of the Act or a supervisor within the meaning of Sec. 2(11) of the Act.

Member Devaney would deny the General Counsel's motion as it pertains to the allegation that the Respondent violated Sec. 8(a)(1) through Fye's conduct. In his view, the Respondent's admission of a legal conclusion does not ''moot'' denial of the material fact underlying that conclusion, i.e., Fye's status as a supervisor or agent. Thus, in Member Devaney's view, the General Counsel has failed to show that the Respondent's answer raises no issues of material fact.

(d) Post at the Respondent's Lodi, California facility copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to terminate our employees because of their union activities and sympathies.

WE WILL NOT tell our employees that we do not want union stewards working on jobsites and that we will harass the union stewards.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Painters Union Local 83, International Brotherhood of Painters and Allied Trades, AFL–CIO or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Gary Van Tuyl immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Gary Van Tuyl that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

EDWARD C. WOLTKAMP D/B/A GENERAL INTERIORS